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9-1.01 Measurement of Quantities. - All work to be paid for at a contract price per unit of measurement will be measured by the Engineer in accordance with United States Standard Measures. A ton shall consist of 2,000 pounds avoirdupois.

Unless shipped by rail, material paid for by weight shall be weighed on scales furnished by and at the expense of the Contractor or on other sealed scales regularly inspected by the Division of Measurement Standards or its designated representative.

All weighing, measuring and metering devices used to measure the quantity of materials used in the work shall be suitable for the purpose intended and shall conform to the tolerances and specifications as outlined in Title 4, Chapter 8 of the California Administrative Code, the provisions of the California Business and Professions Code, Division 5, and these specifications. Devices not Type-approved by the Division of Measurement Standards shall be Type-approved in accordance with California Test 109.

All weighing, measuring or metering devices used to determine the quantity of materials to be paid for will be considered to be "commercial devices," and shall be sealed by the Division of Measurement Standards or its authorized representative as often as the Engineer may deem necessary. The installation of all portable vehicle scales must be approved by the Engineer prior to sealing.

Vehicle scales shall be of sufficient size to permit the entire vehicle or combination of vehicles to rest on the scale deck while being weighed. Combination vehicles may be weighed as separate units provided they are disconnected while being weighed. The maximum concentrated load shall not exceed the manufacturer's designed sectional capacity of the scale.

All weighing, measuring or metering devices required by these specifications for the purpose of proportioning a material or product will be considered to be "non-commercial devices," and shall be tested and approved in accordance with California Test 109. This testing shall be done by one of the following, in the presence of the Engineer, as often as the Engineer deems necessary:

- A County Sealer of Weights and Measures
- A Scale Service Agency
- A Division of Measurement Standards Official

The Contractor shall notify the Engineer at least 24 hours in advance of testing the device.

All undersupports for scale bearing points shall be constructed of Portland cement concrete produced from commercial quality aggregates and cement, which contains not less than 470 pounds of cement per cubic yard. Undersupports shall be constructed in a manner to prevent any shifting or tilting of the support. They shall have a minimum height of 14 inches above ground line. The footings shall have a minimum depth of 6 inches below the ground line. The bearing surface of the footings shall have a minimum width of 30 inches and shall be of such area that the pressure does not exceed 4,000 pounds per square foot. Adequate drainage shall

be provided to prevent saturation of the ground under the scale. Scale bulkheads shall be of adequate material and strength to resist displacement.

If timber bulkheads are used, the minimum cross section shall be 8 inches by 8 inches. Wedges shall not be used to shim the supports. If shimmying is necessary, it shall be done by securely attached metal shims, or by grouting. Shimmying shall not exceed 3 inches. The approach ramps shall be level with the scale deck for a distance of not less than 1/2 the length of the scale deck. The mechanical indicating elements shall be installed level and plumb and shall be rigidly mounted upon a concrete foundation.

The lever system and mechanical indicating elements of hopper scales shall be rigidly attached to non-yielding supports in such a manner as to prevent any loss in weight due to bending and distortion of the supports.

When a multiple beam type scale is used in proportioning materials, an over and under indicator shall be provided which will give positive visible evidence of the amount of any over and under weight. The indicator shall be so designed that it will operate during the addition of the last 200 pounds of any weighing. The over-travel of the indicator shall be at least 1/3 of the loading travel. Indicators shall be enclosed against moisture and dust.

All over and under, dial, and other indicators for weighing and measuring systems used in proportioning materials shall be grouped so that the smallest increment for each indicator can be accurately read from the point at which the proportioning operation is controlled.

The Contractor shall bear the expense of all service fees for testing and approving of "non-commercial devices." The cost of the equipment, labor and materials furnished by the Contractor to assist in the testing of weighing, measuring or metering devices will be considered as included in the contract prices paid for the various contract items requiring said weighing, measuring or metering and no separate payment will be made there.

Whenever pay quantities of material are determined by weighing, the scales shall be operated by a weighmaster licensed in accordance with the provisions of the California Business and Professions Code, Division 5, Chapter 7. The Contractor shall furnish a Public Weighmaster's certificate or certified daily summary weigh sheets. A representative of the Department may, at the discretion of the Engineer, be present to witness the weighing and to check and compile the daily record of such scale weights.

When required by the Engineer, the operator of each vehicle weighed shall obtain a weight or load slip from the weigher and deliver said slip to the Engineer at the point of delivery of the material.

If material is shipped by rail, the car weights will be accepted provided that actual weight of material only will be paid for and not minimum car weight used for assessing freight tariff, and provided further that car weights will not be acceptable for material to be passed through mixing plants.

Vehicles used to haul material being paid for by weight shall be weighed empty daily and at such additional times as the Engineer may direct. Each vehicle shall bear a plainly legible identification mark. Vehicles may from time to time be required by the Engineer to have the weight of the material to be paid for verified by weighing the empty and loaded vehicle on such other scales as the Engineer may designate.

All loads in vehicles hauled over streets and highways shall be legal loads and no payment will be made for the loads in excess of the legal load limits.

All materials which are specified for measurement by the cubic yard "measured in the vehicle" shall be hauled in vehicles of such type and size that the actual contents may be readily and accurately determined. Unless all vehicles are of uniform capacity, each vehicle must bear a plainly legible identification mark indicating its water level capacity. All vehicles shall be loaded to at least their water level capacity and all loads shall be leveled when the vehicles arrive at the point of delivery. Loads hauled in vehicles not meeting the above requirements or loads of a quantity less than the capacity of the vehicle, measured after being leveled off as above provided, will be subject to rejection, and no compensation will be allowed for such material.

When material is to be measured and paid for on a volume basis and it is impractical to determine the volume by the specified method of measurement, or when requested by the Contractor in writing and approved by the Engineer in writing, the material will be weighed in accordance with the requirements specified for weight measurement and such weights will be converted to volume measurement for payment purposes. Factors for conversion from weight measurement to volume measurement will be determined by the Engineer and shall be agreed to by the Contractor before such method of measurement of pay quantities will be adopted.

Quantities of material wasted or disposed of in a manner not called for under the contract, or rejected loads of material, including material rejected after it has been placed by reason of the failure of the Contractor to conform to the provisions of the contract, or material not unloaded from the transporting vehicle, or material placed outside of the lines indicated on the plans or established by the Engineer, or material remaining on hand after completion of the work; will not be paid for and such quantities will be deducted from the final total quantities. No compensation will be allowed for hauling and disposing of rejected material.

The weight of all aggregate or other roadway material which is to be paid for on a weight basis, except imported borrow, imported topsoil, straw, fiber, aggregate subbases, aggregate bases or aggregate for cement treated bases, will be determined by deducting from the weight of material, the weight of water in the material at the time of weighing in excess of 3 percent of the dry weight of the material. When imported borrow, imported topsoil, or aggregate subbase is being paid for on weight basis, the weight to be paid for will be determined by deducting from the weight of the material, the weight of water in the material at the time of weighing in excess of 6 percent of the dry weight of the material. When straw is being paid for on weight basis, the weight to be paid for will be determined by deducting from the weight of straw, the weight of water in the straw at the time of weighing in excess of 15 percent of the dry weight of the straw. When fiber is being paid for on a weight basis, the weight of water in the fiber at the time of weighing shall not exceed 15 percent of the dry weight of the fiber. No deduction will be made for the weight of water in fiber. The percentage of water in the material shall be determined by California Test 226. The weight of aggregate base and aggregate for cement treated bases which are to be paid for on a weight basis, will be determined as provided in Section 26, "Aggregate Bases," and Section 27, "Cement Treated Bases," respectively.

The weight of water deducted as provided in this Section 9-1.01 will not be paid for.

Full compensation for all expense involved in conforming to the requirements specified in this Section 9-1.01 shall be considered as included in the

unit prices paid for the materials being measured or weighed and no additional compensation will be allowed therefor.

9-1.015 Final Pay Quantities. - When the estimated quantities for a specific portion of the work are designated in the contract as final pay quantities, said estimated quantities shall be the final quantities for which payment for such specific portion of the work will be made, unless the dimensions of said portions of the work shown on the plans are revised by the Engineer. If such dimensions are revised, and such revisions result in an increase or decrease in the quantities of such work, the final quantities for payment will be revised in the amount represented by the changes in the dimensions. The estimated quantities for such specific portion of the work shall be considered as approximate only and no guarantee is made that the quantities which can be determined by computations, based on the details and dimensions shown on the plans, will equal the estimated quantities. No allowance will be made in the event that the quantities based on computations do not equal the estimated quantities.

When portions of an item have been designated in the contract as final pay quantities, portions not so designated will be measured and paid for in accordance with the applicable provisions of these specifications and the special provisions.

In case of a discrepancy between the quantities designated in the contract as final pay quantities and the quantity of the same item shown in the Engineer's Estimate, payment will be based on the final pay quantities shown on the plans.

9-1.02 Scope of Payment. - The Contractor shall accept the compensation provided in the contract as full payment for furnishing all labor, materials, tools, equipment, and incidentals necessary to the completed work and for performing all work contemplated and embraced under the contract; also for loss or damage arising from the nature of the work, or from the action of the elements, or from any unforeseen difficulties which may be encountered during the prosecution of the work until the acceptance by the City and for all risks of every description connected with the prosecution of the work, also for all expenses incurred in consequence of the suspension or discontinuance of the work as provided in the contract, and for completing the work according to the plans and specifications. Neither the payment of any estimate nor of any retained percentage shall relieve the Contractor of any obligation to make good any defective work or material.

No compensation will be made in any case for loss of anticipated profits.

Any payment to the Contractor for work performed under this contract, whether a partial progress payment or final payment, shall not waive City's right to demand that the Contractor correct defects in the Contractor's work, whether or not defects were known to the Engineer, the City, its agents or employees at the time such payment was made.

Whenever it is specified or indicated in the contract documents, that the Contractor is to do work, or furnish materials for which no price is fixed in the contract, it is understood and agreed, that there is included in each lump sum or unit price bid, the entire cost of all work, incidental to the completion of that part of the work covered by each lump sum or unit price bid, or if not directly incidental to any specific bid items, the cost thereof has been distributed among those bid items deemed most appropriate by the Contractor.

9-1.03 Force Account Payment. - When extra work is to be paid for on a force account basis, the labor, materials and equipment used in the performance

of such work shall be subject to the approval of the Engineer and compensation will be determined as follows:

9-1.03A Work Performed by Contractor. - The Contractor will be paid the direct costs for labor, materials and equipment used in performing the work determined as hereinafter provided in Sections 9-1.03A (1), "Labor," 9-1.03A (2), "Materials," and 9-1.03A (3), "Equipment Rental," except where agreement has been reached to pay in accordance with Section 9-1.03B, "Work Performed by Special Forces or Other Special Services."

To the total of the direct costs computed as provided in Sections 9-1.03A (1), "Labor," 9-1.03A (2), "Materials," and 9-1.03A (3), "Equipment Rental," there will be added a markup of 33 percent to the cost of labor, 15 percent to the cost of materials, and 15 percent to the equipment rental.

The above markups shall constitute full compensation for all direct and indirect overhead costs and profit which shall be deemed to include all items of expense not specifically designated as cost or equipment rental in Sections 9-1.03A (1), "Labor," 9-1.03A (2), "Materials," and 9-1.03A (3), "Equipment Rental." The total payment made as provided above shall be deemed to be the actual cost of such work and shall constitute full compensation therefor.

When extra work to be paid for on a force account basis is performed by a subcontractor, approved in accordance with the provisions in Section 8-1.01, "Subcontracting," an additional markup of 5 percent will be added to the total cost of said extra work including all markups specified in this Section 9-1.03A. Said additional 5 percent markup shall reimburse the Contractor for additional overhead, job site, home office and administrative costs, and no other additional payment will be made by reason of performance of the extra work by a subcontractor.

9-1.03A (1) Labor. - The Contractor will be paid the cost of labor for the workers (including foremen when authorized by the Engineer), used in the actual and direct performance of the work. The cost of labor, whether the employer is the Contractor, subcontractor, or other forces, will be the sum of the following:

9-1.03A (1a) Actual Wages. - The actual wages paid shall include any employer payments to or on behalf of the workers for health and welfare, pension, vacation, and similar purposes.

9-1.03A (1b) Labor Surcharge. - To the actual wages, as defined in Section 9-1.03A(1a), will be added a labor surcharge set forth in the State of California, Department of Transportation publication entitled Labor Surcharge And Equipment Rental Rates, which is in effect on the date upon which the work is accomplished and which is a part of the contract. Said labor surcharge shall constitute full compensation for all payments imposed by State and Federal laws and for all other payments made to, or on behalf of, the workers, other than actual wages as defined in Section 9-1.03A (1a) and subsistence and travel allowance as specified in Section 9-1.03A (1c).

9-1.03A (1c) Subsistence and Travel Allowance. - The actual subsistence and travel allowance paid to such workers.

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9-1.03A (2) Materials. - The City reserves the right to furnish such materials as it deems advisable, and the Contractor shall have no claims for costs and markup on such materials.

Only materials furnished by the Contractor and necessarily used in the performance of the work will be paid for. The cost of such materials will be the cost to the purchaser, whether Contractor, subcontractor or other forces, from the supplier thereof, except as the following are applicable:

9-1.03A(2a) - If a cash or trade discount by the actual supplier is offered or available to the purchaser, it shall be credited to the City notwithstanding the fact that such discount may not have been taken.

9-1.03A (2b) - If materials are procured by the purchaser by any method which is not a direct purchase from and a direct billing by the actual supplier to such purchaser, the cost of such materials shall be deemed to be the price paid to the actual supplier as determined by the Engineer plus the actual costs, if any, incurred in the handling of such materials.

9-1.03A (2c) - If the materials are obtained from a supply or source owned wholly or in part by the purchaser, the cost of such materials shall not exceed the price paid by the purchaser for similar materials furnished from said source on contract items or the current wholesale price for such materials delivered to the job site, whichever price is lower.

9-1.03A (2d) - If the cost of such materials is, in the opinion of the Engineer, excessive, then the cost of such material shall be deemed to be the lowest current wholesale price at which such materials were available in the quantities concerned delivered to the job site, less any discounts as provided in Section 9-1.03A(2a).

9-1.03A (2e) - If the Contractor does not furnish satisfactory evidence of the cost of such materials from the actual supplier thereof within 60 days after the date of delivery of the material or within 15 days after acceptance of the contract, whichever occurs first, the City reserves the right to establish the cost of such materials at the lowest current wholesale prices at which such materials were available in the quantities concerned delivered to the location of the work, less any discounts as provided in Section 9-1.03A (2a).

9-1.03A(3) Equipment Rental. - The Contractor will be paid for the use of equipment at the rental rates listed for such equipment in the Department of Transportation publication entitled Labor Surcharge And Equipment Rental Rates, which is in effect on the date upon which the work is accomplished and which is a part of the contract, regardless of ownership and rental or other agreement, if such may exist, for use of such equipment entered into by the Contractor, except that for those pieces of equipment with a rental rate of \$10.00 per hour or less as listed in the Labor Surcharge And Equipment Rental Rates publication and which are rented from a local equipment agency, other than Contractor owned, the Contractor will be paid at the hourly rate shown on the rental agency invoice or agreement for the time used on force account work as provided in Section 9-1.03A (3a), "Equipment on the Work." If a minimum equipment rental amount is required by the local equipment rental agency, the actual amount charged will be paid to the Contractor.

If it is deemed necessary by the Engineer to use equipment not listed in said publication, a suitable rental rate for such equipment will be established by the Engineer. The Contractor may furnish any cost data which might assist the Engineer in the establishment of such rental rate. If the rental rate established by the Engineer is \$10.00 per hour or less, the provisions above concerning rental of equipment from a local equipment agency shall apply.

The rental rates paid as above provided shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals.

Operators of rented equipment will be paid for as provided in Section 9-1.03A(1), "Labor."

All equipment shall, in the opinion of the Engineer, be in good working condition and suitable for the purpose for which the equipment is to be used.

Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum ratings recommended by the manufacturer.

Individual pieces of equipment or tools not listed in said publication and having a replacement value of \$500 or less, whether or not consumed by use, shall be considered to be small tools and no payment will be made therefor.

Rental time will not be allowed while equipment is inoperative due to breakdowns.

9-1.03A (3a) Equipment on the Work. - The rental time to be paid for equipment on the work shall be the time the equipment is in operation on the extra work being performed, and in addition, shall include the time required to move the equipment to the location of the extra work and return it to the original location or to another location requiring no more time than that required to return it to its original location, except that moving time will not be paid for if the equipment is used at the site of the extra work on other than such extra work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power, except that no payment will be made if the equipment is used at the site of the extra work on other than such extra work.

The following shall be used in computing the rental time of equipment on the work:

- (1) When hourly rates are listed, less than 30 minutes of operation shall be considered to be 1/2 hour of operation.
- (2) When daily rates are listed, less than 4 hours of operation shall be considered to be 1/2 day of operation.

9-1.03A (3b) Equipment not on the Work. - For the use of equipment moved in on the work and used exclusively for extra work paid for on a force account basis, the Contractor will be paid the rental rates listed in the State of California Department of Transportation publication entitled Labor Surcharge And Equipment Rental Rates, which is in effect on the date upon which the work is accomplished and which is a part of the contract, or determined as provided in Section 9-1.03A (3) and for the cost of transporting the equipment to the location

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of the work and its return to its original location, all in accordance with the following provisions:

- (1) The original location of the equipment to be hauled to the location of the work shall be agreed to by the Engineer in advance.
- (2) The City will pay the costs of loading and unloading such equipment.
- (3) The cost of transporting equipment in low bed trailers shall not exceed the hourly rates charged by established haulers.
- (4) The cost of transporting equipment shall not exceed the applicable minimum established rates of the Public Utilities Commission.
- (5) The rental period shall begin at the time the equipment is unloaded at the site of the extra work, shall include each day that the equipment is at the site of the extra work, excluding Saturdays, Sundays, and legal holidays unless the equipment is used to perform the extra work on such days, and shall terminate at the end of the day on which the Engineer directs the Contractor to discontinue the use of such equipment. The rental time to be paid per day will be in accordance with the following:

*Hours Equipment
is in Operation*

Hours to be paid

0	4
0.5	4.25
1	4.5
1.5	4.75
2	5
2.5	5.25
3	5.5
3.5	5.75
4	6
4.5	6.25
5	6.5
5.5	6.75
6	7
6.5	7.25
7	7.5
7.5	7.75
8	8
Over 8	hours in operation

The hours to be paid for equipment which is operated less than 8 hours due to breakdowns, shall not exceed 8 less the number of hours the equipment is inoperative due to breakdowns.

When hourly rates are listed, less than 30 minutes of operation shall be considered to be 1/2 hour of operation.

When daily rates are listed, payment for 1/2 day will be made if the equipment is not used. If the equipment is used, payment will be made for one day. The minimum rental time to be paid for the entire rental period on an hourly basis shall not be less than 8 hours or, if on a daily basis, shall not be less than one day.

- (6) Should the Contractor desire the return of the equipment to a location other than its original location, the City will pay the cost of transportation in accordance with the above provisions, provided such payment shall not exceed the cost of moving the equipment to the work.
- (7) Payment for transporting, and loading and unloading equipment, as above provided, will not be made if the equipment is used on the work in any other way than upon extra work paid for on a force account basis.

When extra work, other than work specifically designated as extra work in the plans and specifications, is to be paid for on a force account basis and the Engineer determines that such extra work requires the Contractor to move on to the work equipment which could not reasonably have been expected to be needed in the performance of the contract, the Engineer may authorize payment for the use of such equipment at equipment rental rates in excess of those listed as applicable for the use of such equipment subject to the following additional conditions:

- (1) The Engineer shall specifically approve the necessity for the use of particular equipment on such work,
- (2) The Contractor shall establish to the satisfaction of the Engineer that such equipment cannot be obtained from a normal equipment source or sources and those of the subcontractors,
- (3) The Contractor shall establish to the satisfaction of the Engineer that the proposed equipment rental rate for such equipment from the proposed source is reasonable and appropriate for the expected period of use.
- (4) The Engineer shall approve the equipment source and the equipment rental rate to be paid by the City before the Contractor begins work involving the use of said equipment.

9-1.03A(3c) Owner-Operated Equipment. - When owner-operated equipment is used to perform extra work to be paid for on a force account basis, the Contractor will be paid for the equipment and operator, as follows:

Payment for the equipment will be made in accordance with the provisions in Section 9-1.03A(3), "Equipment Rental."

Payment for the cost of labor and subsistence or travel allowance will be made at the rates paid by the Contractor to other workers operating similar

equipment already on the project or, in the absence of such other workers, at the rates for such labor established by collective bargaining agreements for the type of worker and location of the work, whether or not the owner operator is actually covered by such an agreement. A labor surcharge will be added to the cost of labor described herein, in accordance with the provisions in Section 9-1.03A(1b), "Labor Surcharge."

To the direct cost of equipment rental and labor, computed as provided herein, will be added the markups for equipment rental and labor as provided in Section 9-1.03A, "Work Performed by Contractor."

9-1.03B Work Performed by Special Forces or Other Special Services.

-When the Engineer and the Contractor, by agreement, determine that a special service or an item of extra work cannot be performed by the forces of the Contractor or those of any of the subcontractors, such service or extra work item may be performed by a specialist. Invoices for such service or item of extra work on the basis of the current market price thereof may be accepted without complete itemization of labor, material, and equipment rental costs when it is impracticable and not in accordance with the established practice of the special service industry to provide such complete itemization.

In those instances wherein a Contractor is required to perform extra work necessitating a fabrication or machining process in a fabrication or machine shop facility away from the job site, the charges for that portion of the extra work performed in such facility may, by agreement, be accepted as a specialist billing.

To the specialist invoice price, less a credit to the City for any cash or trade discount offered or available, whether or not such discount may have been taken, will be added 15 percent in lieu of the percentages provided in Section 9-1.03A, "Work Performed by Contractor."

9-1.03C Records. - The Contractor shall maintain all records in such a manner as to provide a clear distinction between the direct costs of extra work paid for on a force account basis and the costs of other operations.

From the above records, the Contractor shall furnish the Engineer completed daily extra work reports, on forms furnished by the City, for each day's extra work to be paid for on a force account basis. The daily extra work reports shall itemize the materials used, and shall cover the direct cost of labor and the charges for equipment rental, whether furnished by the Contractor, subcontractor, or other forces, except for charges described in Section 9-1.03B, "Work Performed by Special Forces or Other Special Services." The daily extra work reports shall provide names or identifications and classifications of workers, the hourly rate of pay and hours worked, and also the size, type and identification number of equipment, and hours operated.

Material charges shall be substantiated by valid copies of vendor's invoices. Such invoices shall be submitted with the daily extra work reports, or if not available, they shall be submitted with subsequent daily extra work reports. Should said vendor's invoices not be submitted within 60 days after the date of delivery of the material or within 15 days after the acceptance of the contract, whichever occurs first, the City reserves the right to establish the cost of such materials at the lowest current wholesale prices at which said materials were available in the quantities concerned delivered to the location of work less any discounts as provided in Section 9-1.03A (2a).

Said daily extra work reports shall be signed by the Contractor or the Contractor's authorized representative.

The Engineer will compare his/her records with the completed daily extra work reports furnished by the Contractor and make any necessary adjustments. When these daily extra work reports are agreed upon and signed by both parties, said reports shall become the basis of payment for the work performed, but shall not preclude subsequent adjustment based on a later audit by the City.

The Contractor's cost records pertaining to work paid for on a force account basis shall be open to inspection or audit by representatives of the City, during the life of the contract and for a period of not less than 3 years after the date of acceptance thereof, and the Contractor shall retain such records for that period. Where payment for materials or labor is based on the cost thereof to forces other than the Contractor, the Contractor shall make every reasonable effort to insure that the cost records of such other forces will be open to inspection and audit by representatives of the City on the same terms and conditions as the cost records of the Contractor. If an audit is to be commenced more than 60 days after the acceptance date of the contract, the Contractor will be given a 10 day notice of the time when such audit is to begin.

9-1.03D Payment. - Payment as provided in Sections 9-1.03A, "Work Performed by Contractor," and 9-1.03B, "Work Performed by Special Forces or Other Special Services," shall constitute full compensation to the Contractor for performance of work paid for on a force account basis and no additional compensation will be allowed therefor.

9-1.04 Notice of Potential Claim. - The Contractor shall not be entitled to the payment of any additional compensation for any act, or failure to act, by the Engineer, including failure or refusal to issue a change order, or for the happening of any event, thing, occurrence, or other cause, unless the Contractor shall have given the Engineer due written notice of potential claim as hereinafter specified, provided, however, the written request by this Section 9-1.04 shall not be a prerequisite to claims subject to the protest provisions set forth in Section 4-1.03, "Changes," or Section 8-1.06, "Time of Completion," or the notice provisions in Section 8-1.07, "Liquidated Damages," or Section 8-1.10, "Utility and Non-Highway Facilities," nor to any claim which is based on differences in measurements or errors of computation as to contract quantities.

The written notice of potential claim shall set forth the reasons for which the Contractor believes additional compensation will or may be due, the nature of the costs involved, and, insofar as possible, the amount of the potential claim. The notice as above required must have been given to the Engineer prior to the time that the Contractor shall have performed the work giving rise to the potential claim for additional compensation, if based on an act or failure to act by the Engineer, or in all other cases within 15 days after the happening of the event, thing, occurrence, or other cause, giving rise to the potential claim. City may request additional information from Contractor regarding the Contractor's claim which shall be provided to City within 10 days of the request.

It is the intention of this Section 9-1.04 that differences between the parties arising under and by virtue of the contract be brought to the attention of the Engineer at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken. The Contractor hereby agrees that they shall have no right to additional compensation for any claim that may be

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based on any such act, failure to act, event, thing or occurrence for which no written notice of potential claim as herein required was filed.

9-1.05 Stop Notices. - The City may at its option and at any time retain out of any amounts due the Contractor, sums sufficient to cover claims filed pursuant to Section 3179 et seq of the Civil Code. Stop notice information may be obtained from the Department of Public Works of the City of San Jose.

9-1.06 Partial Payments. - The City, once in each month, shall cause an estimate in writing to be made by the Engineer. The estimate shall include the total amount of work done to the time of such estimate, and the value thereof. The estimate shall also include any amounts payable for mobilization.

The City shall retain 10 percent of such estimated value of the work done, except that at any time after 50 percent of the work has been completed, if the Engineer finds that satisfactory progress is being made, the City may reduce the total amount being retained from payment pursuant to the above requirements to 5 percent of the total estimated value of said work and may so reduce the amount retained from any of the remaining partial payments to 5 percent of the estimated value of such work. In addition, on any partial payment made after 95 percent of the work has been completed, the City may reduce the amount withheld from payment pursuant to the requirements of this Section 9-1.06, to such lesser amount as the Engineer determines is adequate security for the fulfillment of the balance of the work and other requirements of the contract (but in no event will said amount be reduced to less than 125 percent of the estimated value of the work yet to be completed as determined by the Engineer). Such reduction will only be made upon the written request of the Contractor and shall be approved in writing by the surety on the Performance Bond and by the surety on the Payment Bond. The approval of the surety shall be submitted to the City; the signature of the person executing the approval for the surety shall be properly acknowledged and the power of attorney authorizing him/her to give such consent must either accompany the document or be on file with the City.

The Engineer may at any time and in the Engineer's sole discretion reinstate the retention at the full 10 percent of the value of the work performed upon notice to the Contractor. The Contractor shall immediately repay to the City all amounts paid to the Contractor in excess of the 10 percent retention. If the Contractor fails to repay the amount due within a reasonable time, the City may, in addition to all of the other remedies available to it, withhold such amount from future partial payments made to the Contractor.

The City shall pay monthly to the Contractor, while carrying on the work, the balance not retained, as aforesaid, after deducting therefrom all previous payments and all sums to be kept or retained under the provisions of the contract. No such estimate or payment shall be required to be made when, in the judgment of the Engineer, the work is not proceeding in accordance with the provisions of the contract, or the total value of the work done since the last estimate amounts to less than \$5,000.

No such estimate or payment shall be construed to be an acceptance of any defective work or improper materials.

Attention is directed to the express prohibition against payment to unlicensed contractors contained in Public Contract Code Section 10164, the provisions of which are set forth in Section 7-1.01C, "Contractor's Licensing Laws."

The estimates of the Engineer shall be final and conclusive evidence of the amount of work performed by the Contractor under this contract, and shall be taken as full measure of compensation to be received by the Contractor.

Before any partial payment or the final payment is made, the Contractor may be required to submit satisfactory evidence that the Contractor is not delinquent in payments to employees or creditors for labor and materials incorporated into the work.

The Contractor shall maintain and provide to the City, with each partial payment request, certified payrolls for all of its employees and those employees of Contractor's subcontractors.

9-1.065 Payment of Withheld Funds. - The Contractor may substitute securities for any moneys withheld by the City to ensure performance under this contract, provided that substitution of securities shall not be allowed in contracts in which there will be financing provided by the Farmers Home Administration of the United States Department of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. Sec. 1921 et seq.), and where federal statutes, regulations or policies, or both, do not allow the substitution of securities. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the City, or with a state or federally chartered bank as the escrow agent, the City shall then pay such withheld moneys to the Contractor. Upon satisfactory completion of the contract, the securities shall be returned to the Contractor.

Securities eligible for investment under this Section shall include those listed in Section 16430 of the California Government Code, bank or savings and loans certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the City.

The Contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.

The escrow agreement used to implement this Section shall be null, void, and unenforceable unless it is substantially similar to the following form:

ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between City of San Jose whose address is _____, hereinafter called "Owner,"

_____ whose address is _____
 _____ hereinafter called "Contractor"
 and
 _____ whose address is _____
 _____ hereinafter called "Escrow Agent"

For the consideration hereinafter set forth, the Owner, Contractor, and Escrow Agent agree as follows:

- (1) Pursuant to Section 22200 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the Owner and Contractor for _____ in the amount of _____ dated _____ (hereinafter referred to as the "Contract"). Alternatively, on written request of the contractor, the owner shall make payments of the retention earnings directly to the escrow agent. When Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Owner within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the Owner and Contractor. Securities shall be held in the name of _____, and shall designate the Contractor as the beneficial owner.
- (2) The Owner shall make progress payments to the Contractor for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.
- (3) When the Owner makes payment of retentions earned directly to the escrow agent, the escrow agent shall hold them for the benefit of the contractor until such time as the escrow created under this contract is terminated. The Contractor may direct the investment of the payments into securities. All Terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the owner pays the escrow agent directly.

- (4) Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Owner. These expenses and payment terms shall be determined by the Owner, Contractor and Escrow Agent.
- (5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Owner.
- (6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account accompanied by written authorization from Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.
- (7) The Owner shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven days written notice to the Escrow Agent from the Owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.
- (8) Upon receipt of written notification from the Owner certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.
- (9) Escrow Agent shall rely on the written notifications from the Owner and the Contractor pursuant to Sections (4) and (6), inclusive, of this Agreement and the Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest set forth above.
- (10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Owner and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

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On behalf of Owner

On behalf of Contractor

Title

Title

Name

Name

Signature

Signature

Address

Address

On behalf of Escrow Agent

Title

Name

Signature

Address

At the time the Escrow Account is opened, the Owner and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

Owner

Contractor

Title

Title

Name

Name

Signature

Signature

9-1.07 Payment After Acceptance. - After the work has been accepted by the Engineer, as provided in Section 7-1.17, "Acceptance of Contract," payments will be made to the Contractor subject to the provisions in this Section 9-1.07.

9-1.07A Payment Prior to Proposed Final Estimate. - After acceptance of the work by the Engineer, the Engineer will make an estimate of the total amount of work done under the contract and the City will make a final monthly payment pending issuance of the proposed final estimate. The City will pay the balance thereon found to be due after deduction of all previous payments, all amounts to be kept or retained under the provisions of the contract, and such further amounts as the Engineer determines to be necessary pending issuance of said proposed final estimate and payment thereon.

9-1.07B Final Payment and Claims. - If the work is deemed acceptable to the Engineer in the Engineer's sole discretion, after acceptance by the Engineer, the Engineer will make a proposed final estimate in writing of the total amount payable to the Contractor, including therein an itemization of said amount, segregated as to contract item quantities, extra work and any other basis for payment, and shall also show therein all deductions made or to be made for prior payments and amounts to be kept or retained under the provisions of the contract. All prior estimates and payments shall be subject to correction in the proposed final estimate. Within 30 days after said proposed final estimate has been submitted to the Contractor, the Contractor shall submit to the Engineer written approval of said proposed final estimate or a written statement of all claims the Contractor has arising under or by virtue of the contract. No claim will be considered that was not included in said written statement of claims, nor will any claim be allowed as to which a notice or protest is required under the provisions in Sections 4-1.03, "Changes," 8-1.06, "Time of Completion," 8-1.07, "Liquidated Damages," 8-1.10, "Utility and Non-Highway Facilities," and 9-1.04, "Notice of Potential Claim," unless the Contractor has complied with the notice or protest requirements in said sections.

On the Contractor's approval, or if the Contractor files no claim within said period of 30 days, the Engineer will issue a final estimate in writing in accordance with the proposed final estimate submitted to the Contractor and within 30 days thereafter the City will pay the entire sum so found to be due. Such final estimate and payment thereon shall be conclusive and binding against both parties to the contract on all questions relating to the amount of work done and the compensation payable therefor, except as otherwise provided in Section 9-1.03C, "Records."

If the Contractor within said period of 30 days files claims, the Engineer will issue a semifinal estimate in accordance with the Proposed final estimate submitted to the Contractor and within 30 days thereafter the City will pay the sum so found to be due. Such semifinal estimate and payment thereon shall be conclusive and binding against both parties to the contract on all questions relating to the amount of work done and the compensation payable therefor, except insofar as affected by the claims filed within the time and in the manner required hereunder and except as otherwise provided in Section 9-1.03C, "Records."

The claims filed by the Contractor shall be in sufficient detail to enable the Engineer to ascertain the basis and amount of said claims. The Engineer will consider and determine the Contractor's claims and it will be the responsibility of the Contractor to furnish within a reasonable time such further information and

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details as may be required by the Engineer to determine the facts or contentions involved in the Contractor's claims. Failure to submit such information and details will be sufficient cause for denying the claims and shall constitute a waiver of such claims.

The Engineer will make the final determination of any claims which remain in dispute after completion of claim review. The Engineer will review such claims and make a written recommendation thereon. The Contractor may meet with the review board or person to make a presentation in support of such claims.

Upon final determination of the claims, the Engineer shall then make and issue the Engineer's final estimate in writing and within 30 days thereafter the City will pay the entire sum, if any, found due thereon. Such final estimate shall be conclusive and binding against both parties to the contract on all questions relating to the amount of work done and the compensation payable therefor, except as otherwise provided in Section 9-1.03C, "Records."

Before the final payment can be made, the Contractor shall also submit to the Engineer all record drawings, catalog data, warranties and guarantees, operation and maintenance instruction sheets, and other items as required by the contract documents.

9-1.08 (Blank)

9-1.09 (Blank)

9-1.10 No Arbitration of Disputes. - All disputes shall be resolved by litigation as provided for herein.

END OF SECTION